

Pub. L. 95-454, title II, §201(c)(2), Oct. 13, 1978, 92 Stat. 1121, substituted “Office of Personnel Management” for “Organization” in item for chapter 11.

Pub. L. 95-454, title II, §202(d), Oct. 13, 1978, 92 Stat. 1131, added item for chapter 12.

CHAPTER 11—OFFICE OF PERSONNEL MANAGEMENT

Sec.	
1101.	Office of Personnel Management.
1102.	Director; Deputy Director; Associate Directors.
1103.	Functions of the Director.
1104.	Delegation of authority for personnel management.
1105.	Administrative procedure.

AMENDMENTS

1978—Pub. L. 95-454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119, substituted in chapter heading “OFFICE OF PERSONNEL MANAGEMENT” for “ORGANIZATION”, in item 1101 “Office of Personnel Management” for “Appointment of Commissioners”, in item 1102 “Director; Deputy Director; Associate Directors” for “Term of office; filling vacancies; removal”, in item 1103 “Functions of the Director” for “Chairman; Vice Chairman; Executive Director”, in item 1104 “Delegation of authority for personnel management” for “Functions of Chairman”, and in item 1105 “Administrative procedure” for “Boards of examiners”.

§ 1101. Office of Personnel Management

The Office of Personnel Management is an independent establishment in the executive branch. The Office shall have an official seal, which shall be judicially noticed, and shall have its principal office in the District of Columbia, and may have field offices in other appropriate locations.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 398; Pub. L. 95-454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 632 (1st par.).	Jan. 16, 1883, ch. 27, §1 (1st par.), 22 Stat. 403.

The words “official place under the United States” are changed to “another office or position in the Government” of the “United States” to conform to the present legislative use of “office” and “position”.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Office of Personnel Management” for “Appointment of Commissioners” in section catchline, and in text provisions relating to the establishment, etc., of the Office of Personnel Management for provisions relating to the appointment of members to the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 907 of Pub. L. 95-454 provided that: “Except as otherwise expressly provided in this Act, the provisions of this Act [see Tables for classification] shall take effect 90 days after the date of the enactment of this Act [Oct. 13, 1978].”

SHORT TITLE OF 1992 AMENDMENT

Pub. L. 102-378, §1(a), Oct. 2, 1992, 106 Stat. 1346, provided that: “This Act [see Tables for classification]

may be cited as the ‘Technical and Miscellaneous Civil Service Amendments Act of 1992’.”

SHORT TITLE OF 1984 AMENDMENT

Pub. L. 98-224, §1, Mar. 2, 1984, 98 Stat. 47, provided that: “This Act [amending sections 1304, 3323, 4108, 4109, 7104, and 7122 of this title] may be cited as the ‘Civil Service Miscellaneous Amendments Act of 1983’.”

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-454 provided that: “This Act [see Tables for classification] may be cited as the ‘Civil Service Reform Act of 1978’.”

COMBINED FEDERAL CAMPAIGN BROCHURE LIST AND GENERAL DESIGNATION OPTION FOR INTERNATIONAL AGENCIES

Pub. L. 102-393, title V, §532, Oct. 6, 1992, 106 Stat. 1763, provided that: “Notwithstanding any other provision of law, beginning October 1, 1992, and thereafter, no funds made available to the Office of Personnel Management may be used to prepare, promulgate, or implement any rules or regulations relating to the Combined Federal Campaign unless such rules or regulations include a Combined Federal Campaign brochure list and general designation option solely for international agencies, which list (listed by Federation in the case of affiliated agencies) and option shall include only those international agencies that elect in their annual application to be included under such list and option rather than under the national agencies list and option: *Provided*, That such limitation on the use of funds shall not apply to any activities related to the 1992 Combined Federal Campaign.”

REPORT ON PRODUCTIVITY OF FEDERAL WORKFORCE; DEADLINE

Pub. L. 101-509, title V, §535, Nov. 5, 1990, 104 Stat. 1470, directed Office of Personnel Management to review and report to Congress, not later than 24 months after Nov. 5, 1990, on the productivity of the Federal workforce, such report to include recommendations with regard to (1) how productivity within the Federal workforce can be increased, the delivery of Government services improved, and the payroll costs of Government controlled through improved organization, training, advanced technology, and modern management practices, (2) the size, structure, and composition of the Federal workforce, (3) criteria for use by departments and agencies to determine the level of personnel necessary to accomplish their functions and goals, and (4) changes in Federal law, regulations, and administrative practices to promote economy, productivity, effectiveness, and managerial accountability within the Federal workforce.

FUNDS FOR PREPARATION, PROMULGATION, OR IMPLEMENTATION OF REGULATIONS RELATING TO COMBINED FEDERAL CAMPAIGN; ELIGIBILITY CRITERIA

Pub. L. 100-202, §101(m) [title VI, §618], Dec. 22, 1987, 101 Stat. 1329-390, 1329-423, provided that:

“(a) None of the funds appropriated by this Act, or any other Act in this or any fiscal year hereafter, may be used in preparing, promulgating, or implementing any regulations relating to the Combined Federal Campaign if such regulations are not in conformance with subsection (b).

“(b)(1)(A) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall not, to the extent that such requirements relate to litigation, public-policy advocacy, or attempting to influence legislation, be any more restrictive than any requirements established with respect to those subject matters under section 501(c)(3) or 501(h) of the Internal Revenue Code of 1986 [26 U.S.C. 501(c)(3), (h)].

“(B) Any requirements for eligibility to receive contributions through the Combined Federal Campaign shall, to the extent that such requirements relate to any subject matter other than one referred to in sub-

paragraph (A), remain the same as the criteria in the 1984 regulations, except as otherwise provided in this section.

“(C) Notwithstanding any requirement referred to in subparagraph (A) or (B), for purposes of any Combined Federal Campaign—

“(i) any voluntary agency or federated group which was a named plaintiff as of September 1, 1987, in a case brought in the United States District Court for the District of Columbia, and designated as Civil Action No. 83-0928 or 86-1367, and

“(ii) The Federal Employee Education and Assistance Fund, shall be considered to have national eligibility.

“(D) Public accountability standards shall remain similar to the standards which were by regulation established with respect to the 1984-1987 Combined Federal Campaigns, except that the Office of Personnel Management shall prescribe regulations under which a voluntary agency or federated group which does not exceed a certain size (as established under such regulations) may submit a copy of an appropriate Federal tax return, rather than complying with any independent auditing requirements which would otherwise apply.

“(2)(A) A voluntary agency or federated group shall, for purposes of any Combined Federal Campaign in any year, be considered to have national eligibility if such agency or group—

“(i) complies with all requirements for eligibility to receive contributions through the Combined Federal Campaign, without regard to any requirements relating to ‘local presence’; and

“(ii) demonstrates that it provided services, benefits, or assistance, or otherwise conducted program activities, in—

“(I) 15 or more different States over the 3-year period immediately preceding the start of the year involved; or

“(II) several foreign countries or several parts of a foreign country.

For purposes of this subparagraph, an agency or federated group shall be considered to have conducted program activities in the required number of States, countries, or parts of a country, over the period of years involved, if such agency or group conducted program activities in such number of States, countries, or parts either in any single year during such period or in the aggregate over the course of such period, provided that no State, country, or part of a country is counted more than once.

“(B) Notwithstanding any other provisions, eligibility requirements relating to International Services Agencies shall remain at least as inclusive as existing requirements. Any voluntary agency or federated group which attains national eligibility under subparagraph (A), and any voluntary agency which is a member of the International Services Agencies, shall be considered to have satisfied any requirements relating to ‘local presence’.

“(3)(A) If a federated group is eligible to receive donations in a Combined Federal Campaign, whether on a national level (pursuant to certification by the Office) or a local level (pursuant to certification by the local Federal coordinating committee), each voluntary agency which is a member of such group may, upon certification by the federated group, be considered eligible to participate on such national or local level, as the case may be.

“(B) Notwithstanding any provision of subparagraph (A)—

“(i) the Office may require a voluntary agency to provide information to support any certification submitted by a federated group with respect to such agency under subparagraph (A); and

“(ii) if a determination is made, in writing after notice and opportunity to submit written comments, that the information submitted by the voluntary agency does not satisfy the applicable eligibility requirements, such agency may be barred from participating in the Combined Federal Campaign on a na-

tional or local level, as the case may be, for a period not to exceed 1 campaign year.

“(4) The Office shall exercise oversight responsibility to ensure that—

“(A) regulations are uniformly and equitably implemented in all local combined Federal campaigns;

“(B) federated groups participating in a local combined Federal campaign are allowed to compete fairly for the role of principal combined fund organization;

“(C) federated groups participating in a local combined Federal campaign are afforded—

“(i) adequate opportunity to consult with the PCFO for the area involved before any plans are made final relating to the design or conduct of such campaign (including plans pertaining to any materials to be printed as part of the campaign);

“(ii) adequate opportunity to participate in campaign events and other related activities; and

“(iii) timely access to all reports, budgets, audits, and other records in the possession of, or under the control of, the PCFO for the areas involved; and

“(D) a federated group or voluntary agency found by the Office, by a written decision issued after notice and opportunity to submit written comments, to have violated the regulations may be barred from serving as a PCFO for not to exceed 1 campaign year.

“(5) The Office shall prescribe regulations to ensure that PCFOs do not make inappropriate delegations of decisionmaking authority.

“(6)(A) The Office shall, in consultation with federated groups, establish a formula under which any undesignated contributions received in a local combined Federal campaign shall be allocated in any year.

“(B) Under the formula for the 1990 Combined Federal Campaign, all undesignated contributions received in a local campaign shall be allocated as follows:

“(i) 82 percent shall be allocated to the United Way.

“(ii) 7 percent shall be allocated to the International Services Agencies.

“(iii) 7 percent shall be allocated to the National Voluntary Health Agencies.

“(iv) 4 percent shall, after fair and careful consideration of all eligible federated groups and agencies, be allocated by the local Federal coordinating committee among any or all of the following:

“(I) National federated groups (other than any identified in clauses (i), (ii), or (iii)), except that a national federated group shall not be eligible under this subclause unless there are at least 15 members of such group participating in the local campaign, unless the members of such group collectively receive at least 4 percent of the designated contributions in the local campaign, and unless such group was granted national eligibility status for the 1987, 1988, 1989, or 1990 Combined Federal Campaign.

“(II) Local federated groups.

“(III) Any local, non-affiliated voluntary agency which receives at least 4 percent of the designated contributions in the local campaign.

“(C) The formula set forth in subparagraph (B)—

“(i) shall be phased in over the course of the 1988 and 1989 Combined Federal Campaigns;

“(ii) shall be fully implemented with respect to the 1990 Combined Federal Campaigns [sic]; and

“(iii) shall, with respect to any Combined Federal Campaign thereafter, be adjusted based on the experience gained in the Combined Federal Campaigns referred to in clauses (i) and (ii).

“(D) Nothing in this paragraph shall apply with respect to any campaign conducted in a foreign country.

“(E) All appropriate steps shall be taken to encourage donors to make designated contributions.

“(7) The option for a donor to write in the name of a voluntary agency or federated group not listed in the campaign brochure to receive that individual's contribution in a local campaign shall be eliminated.

“(8) The name of any individual making a designated contribution in a campaign shall, upon request of the recipient voluntary agency or federated group, be released to such agency or group, unless the contributor

indicates that his or her name is not to be released. Under no circumstance may the names of contributors be sold or otherwise released by such agency or group.

“(9)(A) The name of each participating voluntary agency and federated group, together with a brief description of their respective programs, shall be published in any information leaflet distributed to employees in a local combined Federal campaign. Agencies shall be arranged by federated group, with combined Federal campaign organization code numbers corresponding to each such agency and group.

“(B) The requirement under subparagraph (A) relating to the inclusion of program descriptions may, at the discretion of a local Federal coordinating committee, be waived for a local campaign in any year if, in the immediately preceding campaign year, contributions received through the local campaign totalled less than \$100,000.

“(10) Employee coercion is not to be tolerated in the Combined Federal Campaign, and protections against employee coercion shall be strengthened and clarified.

“(11) The Office—

“(A) may not, after the date of the enactment of this Act [Dec. 22, 1987], grant national eligibility status to any federated group unless such group has at least 15 member voluntary agencies, each of which meets the requirements for national eligibility under paragraph (2)(A); and

“(B) may withdraw federation status from any federated group for a period of not to exceed 1 campaign year if it is determined, on the record after opportunity for a hearing, that the federated group has not complied with the regulatory requirements.

“(12) The Office may bar from participation in the Combined Federal Campaign, for a period not to exceed 1 campaign year, any voluntary agency which the Office determines, in writing, and after notice and opportunity to submit written comments, did not comply with a reasonable request by the Office to furnish it with information relating to such agency's campaign accounting and auditing practices.

“(c) For purposes of this section, a voluntary agency or federated group having ‘national eligibility’ is one which is eligible to participate in each local domestic combined Federal campaign.”

CIVIL SERVICE REFORM ACT OF 1978 FINDINGS AND STATEMENT OF PURPOSE

Section 3 of Pub. L. 95-454 provided that: “It is the policy of the United States that—

“(1) in order to provide the people of the United States with a competent, honest, and productive Federal work force reflective of the Nation's diversity, and to improve the quality of public service, Federal personnel management should be implemented consistent with merit system principles and free from prohibited personnel practices;

“(2) the merit system principles which shall govern in the competitive service and in the executive branch of the Federal Government should be expressly stated to furnish guidance to Federal agencies in carrying out their responsibilities in administering the public business, and prohibited personnel practices should be statutorily defined to enable Federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system;

“(3) Federal employees should receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board in processing hearings and appeals affecting Federal employees;

“(4) the authority and power of the Special Counsel should be increased so that the Special Counsel may investigate allegations involving prohibited personnel practices and reprisals against Federal employees for the lawful disclosure of certain information and may file complaints against agency officials and employees who engage in such conduct;

“(5) the function of filling positions and other personnel functions in the competitive service and in the

executive branch should be delegated in appropriate cases to the agencies to expedite processing appointments and other personnel actions, with the control and oversight of this delegation being maintained by the Office of Personnel Management to protect against prohibited personnel practices and the use of unsound management practices by the agencies;

“(6) a Senior Executive Service should be established to provide the flexibility needed by agencies to recruit and retain the highly competent and qualified executives needed to provide more effective management of agencies and their functions, and the more expeditious administration of the public business;

“(7) in appropriate instances, pay increases should be based on quality of performance rather than length of service;

“(8) research programs and demonstration projects should be authorized to permit Federal agencies to experiment, subject to congressional oversight, with new and different personnel management concepts in controlled situations to achieve more efficient management of the Government's human resources and greater productivity in the delivery of service to the public;

“(9) the training program of the Government should include retraining of employees for positions in other agencies to avoid separations during reductions in force and the loss to the Government of the knowledge and experience that these employees possess; and

“(10) the right of Federal employees to organize, bargain collectively, and participate through labor organizations in decisions which affect them, with full regard for the public interest and the effective conduct of public business, should be specifically recognized in statute.”

SAVINGS PROVISION

Section 902 of Pub. L. 95-454 provided that:

“(a) Except as otherwise provided in this Act [see Tables for classification], all executive orders, rules, and regulations affecting the Federal service shall continue in effect, according to their terms, until modified, terminated, superseded, or repealed by the President, the Office of Personnel Management, the Merit Systems Protection Board, the Equal Employment Opportunity Commission, or the Federal Labor Relations Authority with respect to matters within their respective jurisdictions.

“(b) No provision of this Act [see Tables for classification] shall affect any administrative proceedings pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

“(c) No suit, action, or other proceeding lawfully commenced by or against the Director of the Office of Personnel Management or the members of the Merit Systems Protection Board, or officers or employees thereof, in their official capacity or in relation to the discharge of their official duties, as in effect immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above], shall abate by reason of the enactment of this Act [see Tables for classification]. Determinations with respect to any such suit, action, or other proceeding shall be made as if this Act had not been enacted.”

POWERS OF PRESIDENT UNAFFECTED EXCEPT BY EXPRESS PROVISIONS

Section 904 of Pub. L. 95-454 provided that:

“Except as otherwise expressly provided in this Act [see Tables for classification], no provision of this Act shall be construed to—

“(1) limit, curtail, abolish, or terminate any function of, or authority available to, the President which the President had immediately before the effective date of this Act [see Effective Date of 1978 Amendment note above]; or

“(2) limit, curtail, or terminate the President's authority to delegate, redelegate, or terminate any delegation of functions.”

REORGANIZATION PLANS NO. 1 AND 2 OF 1978
SUPERSEDED BY CIVIL SERVICE REFORM ACT OF 1978

Section 905 of Pub. L. 95-454 provided that: "Any provision in either Reorganization Plan Numbered 1 [set out in the Appendix to this title] or 2 [set out below] of 1978 inconsistent with any provision in this Act [see Tables for classification] is hereby superseded."

REORGANIZATION PLAN NO. 2 OF 1978

43 F.R. 36037, 92 Stat. 3783

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, May 23, 1978,¹ pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

PART I. OFFICE OF PERSONNEL MANAGEMENT

SECTION 101. ESTABLISHMENT OF THE OFFICE OF PERSONNEL MANAGEMENT AND ITS DIRECTOR AND OTHER MATTERS

There is hereby established as an independent establishment in the Executive Branch, the Office of Personnel Management (the "Office"). The head of the Office shall be the Director of the Office of Personnel Management (the "Director"), who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for level II of the Executive Schedule [5 U.S.C. 5313]. The position referred to in 5 U.S.C. 5109(b) is hereby abolished.

SEC. 102. TRANSFER OF FUNCTIONS

Except as otherwise specified in this Plan, all functions vested by statute in the United States Civil Service Commission, or the Chairman of said Commission, or the Boards of Examiners established by 5 U.S.C. 1105 are hereby transferred to the Director of the Office of Personnel Management.

SEC. 103. DEPUTY DIRECTOR AND ASSOCIATE DIRECTORS

(a) There shall be within the Office a Deputy Director who shall be appointed by the President by and with the advice and consent of the Senate and who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or in the event of a vacancy in the Office of the Director.

(b) There shall be within the Office not more than five Associate Directors, who shall be appointed by the Director in the excepted service, shall have such titles as the Director shall from time to time determine, and shall receive compensation at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

SEC. 104. FUNCTIONS OF THE DIRECTOR

The functions of the Director shall include, but not be limited to, the following:

(a) Aiding the President, as the President may request, in preparing such rules as the President prescribes, for the administration of civilian employment now within the jurisdiction of the United States Civil Service Commission;

(b) Advising the President, as the President may request, on any matters pertaining to civilian employment now within the jurisdiction of the United States Civil Service Commission;

(c) Executing, administering and enforcing the Civil Service rules and regulations of the President and the Office and the statutes governing the same, and other activities of the Office including retirement and classification activities except to the extent such functions remain vested in the Merit Systems Protection Board

pursuant to Section 202 of this Plan, or are transferred to the Special Counsel pursuant to Section 204 of this Plan. The Director shall provide the public, where appropriate, a reasonable opportunity to comment and submit written views on the implementation and interpretation of such rules and regulations;

(d) Conducting or otherwise providing for studies and research for the purpose of assuring improvements in personnel management, and recommending to the President actions to promote an efficient Civil Service and a systematic application of the merit system principles, including measures relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separations of employees; and

(e) Performing the training responsibilities now performed by the United States Civil Service Commission as set forth in 5 U.S.C. Chapter 41.

SEC. 105. AUTHORITY TO DELEGATE FUNCTIONS

The Director may delegate, from time to time, to the head of any agency employing persons in the competitive service, the performance of all or any part of those functions transferred under this Plan to the Director which relate to employees, or applicants for employment, of such agency.

PART II. MERIT SYSTEMS PROTECTION BOARD

SEC. 201. MERIT SYSTEMS PROTECTION BOARD

(a) The United States Civil Service Commission is hereby redesignated the Merit Systems Protection Board. The Commissioners of the United States Civil Service Commission are hereby redesignated as members of the Merit Systems Protection Board (the "Board").

(b) The Chairman of the Board shall be its chief executive and administrative officer. The position of Executive Director, established by 5 U.S.C. 1103(d), is hereby abolished.

SEC. 202. FUNCTIONS OF THE MERIT SYSTEMS PROTECTION BOARD AND RELATED MATTERS

(a) There shall remain with the Board the hearing, adjudication, and appeals functions of the United States Civil Service Commission specified in 5 U.S.C. 1104(b)(4) (except hearings, adjudications and appeals with respect to examination ratings), and also found in the following statutes:

- (i) 5 U.S.C. 1504-1507, 7325, 5335, 7521, 7701 and 8347(d);
- (ii) 38 U.S.C. 2023

(b) There shall remain with the Board the functions vested in the United States Civil Service Commission, or its Chairman, pursuant to 5 U.S.C. 1104(a)(5) and (b)(4) to enforce decisions rendered pursuant to the authorities described in Subsection (a) of this Section.

(c) Any member of the Board may request from the Director, in connection with a matter then pending before the Board for adjudication, an advisory opinion concerning interpretation of rules, regulations, or other policy directives promulgated by the Office of Personnel Management.

(d) Whenever the interpretation or application of a rule, regulation, or policy directive of the Office of Personnel Management is at issue in any hearing, adjudication, or appeal before the Board, the Board shall promptly notify the Director, and the Director shall have the right to intervene in such proceedings.

(e) The Board shall designate individuals to chair performance rating boards established pursuant to 5 U.S.C. 4305.

(f) The Chairman of the Board shall designate representatives to chair boards of review established pursuant to 5 U.S.C. 3383(b).

(g) The Board may from time to time conduct special studies relating to the Civil Service, and to other merit systems in the Executive Branch and report to the President and the Congress whether the public interest in a workforce free of personnel practices prohibited by law or regulations is being adequately protected. In

¹ As amended July 11, 1978.

carrying out this function the Board shall make such inquiries as may be necessary, and, to the extent permitted by law, shall have access to personnel records or information collected by the Office of Personnel Management and may require additional reports from other agencies as needed. The Board shall make such recommendations to the President and the Congress as it deems appropriate.

(h) The Board may delegate the performance of any of its administrative functions to any officer or employee of the Board.

(i) The Board shall have the authority to prescribe such regulations as may be necessary for the performance of its functions. The Board shall not issue advisory opinions. The Board may issue rules and regulations, consistent with statutory requirements, defining its review procedures, including the time limits within which an appeal must be filed and the rights and responsibilities of the parties to an appeal. All regulations of the Board shall be published in the FEDERAL REGISTER.

SEC. 203. SAVINGS PROVISION

The Board shall accept appeals from agency actions effected prior to the effective date of this Plan. On the effective date of Part II of this Plan, proceedings then before the Federal Employee Appeals Authority shall continue before the Board; proceedings then before the Appeals Review Board and proceedings then before the United States Civil Service Commission on appeal from decisions of the Appeals Review Board shall continue before the Board; other employee appeals before boards or other bodies pursuant to law or regulation shall continue to be processed pursuant to those laws or regulations. Nothing in this section shall affect the right of a Federal employee to judicial review under applicable law.

SEC. 204. THE SPECIAL COUNSEL

(a) There shall be a Special Counsel to the Board appointed for a term of four years by the President by and with the advice and consent of the Senate, who shall be compensated as now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(b) There are hereby transferred to the Special Counsel all functions with respect to investigations relating to violations of 5 U.S.C. Chapter 15; 5 U.S.C. Subchapter III of Chapter 73 (Political Activities); and 5 U.S.C. 552(a)(4)(F) (public information).

(c) The Special Counsel may investigate, pursuant to 5 U.S.C. 1303, allegations of personnel practices which are prohibited by law or regulation.

(d) When in the judgment of the Special Counsel, such personnel practices exist, he shall report his findings and recommendations to the Chairman of the Merit Systems Protection Board, the agency affected, and to the Office of Personnel Management, and may report such findings to the President.

(e) When in the judgment of the Special Counsel, the results of an investigation would warrant the taking of disciplinary action against an employee who is within the jurisdiction of the Board, the Special Counsel shall prepare charges against such employee and present them with supporting documentation to the Board. Evidence supporting the need for disciplinary action against a Presidential appointee shall be submitted by the Special Counsel to the President.

(f) The Special Counsel may appoint personnel necessary to assist in the performance of his functions.

(g) The Special Counsel shall have the authority to prescribe rules and regulations relating to the receipt and investigation of matters under his jurisdiction. Such regulations shall be published in the FEDERAL REGISTER.

(h) The Special Counsel shall not issue advisory opinions.

PART III. FEDERAL LABOR RELATIONS AUTHORITY

SEC. 301. ESTABLISHMENT OF THE FEDERAL LABOR RELATIONS AUTHORITY

(a) There is hereby established, as an independent establishment in the Executive Branch, the Federal Labor Relations Authority (the "Authority"). The Authority shall be composed of three members, one of whom shall be Chairman, not more than two of whom may be adherents of the same political party, and none of whom may hold another office or position in the Government of the United States except where provided by law or by the President.

(b) Members of the Authority shall be appointed by the President, by and with the advice and consent of the Senate. The President shall designate one member to serve as Chairman of the Authority, who shall be compensated at the rate now or hereafter provided for level III of the Executive Schedule [5 U.S.C. 5314]. The other members shall be compensated at the rate now or hereafter provided for level IV of the Executive Schedule [5 U.S.C. 5315].

(c) The initial members of the Authority shall be appointed as follows: one member for a term of two years; one member for a term of three years; and the Chairman for a term of four years. Thereafter, each member shall be appointed for a term of four years. An individual chosen to fill a vacancy shall be appointed for the unexpired term of the member replaced.

(d) The Authority shall make an annual report on its activities to the President for transmittal to Congress.

SEC. 302. ESTABLISHMENT OF THE GENERAL COUNSEL OF THE AUTHORITY

There shall be a General Counsel of the Authority, who shall be appointed by the President, by and with the advice and consent of the Senate for a term of four years, and who shall be compensated at the rate now or hereafter provided for level V of the Executive Schedule [5 U.S.C. 5316]. The General Counsel shall perform such duties as the Authority shall from time to time prescribe, including but not limited to the duty of determining and presenting facts required by the Authority in order to decide unfair labor practice complaints.

SEC. 303. THE FEDERAL SERVICE IMPASSES PANEL

The Federal Service Impasses Panel, established under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], (the "Panel") shall continue, and shall be a distinct organizational entity within the Authority.

SEC. 304. FUNCTIONS

Subject to the provisions of Section 306, the following functions are hereby transferred:

(a) To the Authority—

(1) The functions of the Federal Labor Relations Council pursuant to Executive Order 11491, as amended [set out under 5 U.S.C. 7101];

(2) The functions of the Civil Service Commission under Sections 4(a) and 6(e) of Executive Order 11491, as amended;

(3) The functions of the Assistant Secretary of Labor for Labor-Management Relations, under Executive Order 11491, as amended, except for those functions related to alleged violations of the standards of conduct for labor organizations pursuant to Section 6(a)(4) of said Executive Order; and,

(b) to the Panel—the functions and authorities of the Federal Service Impasses Panel, pursuant to Executive Order 11491, as amended.

SEC. 305. AUTHORITY DECISIONS

The decisions of the Authority on any matter within its jurisdiction shall be final and not subject to judicial review.

SEC. 306. OTHER PROVISIONS

Unless and until modified, revised, or revoked, all policies, regulations, and procedures established, and

decisions issued, under Executive Order 11491, as amended [set out under 5 U.S.C. 7101], shall remain in full force and effect. There is hereby expressly reserved to the President the power to modify the functions transferred to the Federal Labor Relations Authority and the Federal Service Impasses Panel pursuant to Section 304 of this Plan.

SEC. 307. SAVINGS PROVISION

All matters which relate to the functions transferred by Section 304 of this Plan, and which are pending on the effective date of the establishment of the Authority before the Federal Labor Relations Council, the Vice Chairman of the Civil Service Commission, or the Assistant Secretary of Labor for Labor-Management Relations shall continue before the Authority under such rules and procedures as the Authority shall prescribe. All such matters pending on the effective date of the establishment of the Authority before the Panel, shall continue before the Panel under such rules and procedures as the Panel shall prescribe.

PART IV. GENERAL PROVISIONS

SEC. 401. INCIDENTAL TRANSFER

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SEC. 402. INTERIM OFFICERS

(a) The President may authorize any persons who, immediately prior to the effective date of this Plan, held positions in the Executive Branch of the Government, to act as Director of the Office of Personnel Management, the Deputy Director of the Office of Personnel Management, the Special Counsel, the Chairman and other members of the Federal Labor Relations Authority, the Chairman and other members of the Federal Service Impasses Panel, or the General Counsel of the Authority, until those offices are for the first time filled pursuant to the provisions of this Reorganization Plan or by recess appointment, as the case may be.

(b) The President may authorize any such person to receive the compensation attached to the Office in respect of which that person so serves, in lieu of other compensation from the United States.

SEC. 403. EFFECTIVE DATE

The provisions of this Reorganization Plan shall become effective at such time or times, on or before January 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

[Pursuant to Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, this Reorg. Plan is generally effective Jan. 1, 1979.]

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

On March 2nd I sent to Congress a Civil Service Reform proposal to enable the Federal government to improve its service to the American people.

Today I am submitting another part of my comprehensive proposal to reform the Federal personnel management system through Reorganization Plan No. 2 of 1978. The plan will reorganize the Civil Service Com-

mission and thereby create new institutions to increase the effectiveness of management and strengthen the protection of employee rights.

The Civil Service Commission has acquired inherently conflicting responsibilities: to help manage the Federal Government and to protect the rights of Federal employees. It has done neither job well. The Plan would separate the two functions.

OFFICE OF PERSONNEL MANAGEMENT

The positive personnel management tasks of the government—such as training, productivity programs, examinations, and pay and benefits administration—would be the responsibility of an Office of Personnel Management. Its Director, appointed by the President and confirmed by the Senate, would be responsible for administering Federal personnel matters except for Presidential appointments. The Director would be the government's principal representative in Federal labor relations matters.

MERIT SYSTEMS PROTECTION BOARD

The adjudication and prosecution responsibilities of the Civil Service Commission will be performed by the Merit Systems Protection Board. The Board will be headed by a bipartisan panel of three members appointed to six-year, staggered terms. This Board would be the first independent and institutionally impartial Federal agency solely for the protection of Federal employees.

The Plan will create, within the Board, a Special Counsel to investigate and prosecute political abuses and merit system violations. Under the civil service reform legislation now being considered by the Congress, the Counsel would have power to investigate and prevent reprisals against employees who report illegal acts—the so-called “whistleblowers.” The Council would be appointed by the President and confirmed by the Senate.

FEDERAL LABOR RELATIONS AUTHORITY

An Executive Order now vests existing labor-management relations in a part-time Federal Labor-Relations Council, comprised of three top government managers; other important functions are assigned to the Assistant Secretary of Labor for Labor-Management Relations. This arrangement is defective because the Council members are part-time, they come exclusively from the ranks of management and their jurisdiction is fragmented.

The Plan I submit today would consolidate the central policymaking functions in labor-management relations now divided between the Council and the Assistant Secretary into one Federal Labor Relations Authority. The Authority would be composed of three full-time members appointed by the President with the advice and consent of the Senate. Its General Counsel, also appointed by the President and confirmed by the Senate, would present unfair labor practice complaints. The Plan also provides for the continuance of the Federal Service Impasses Panel within the Authority to resolve negotiating impasses between Federal employee unions and agencies.

The cost of replacing the Civil Service Commission can be paid by our present resources. The reorganization itself would neither increase nor decrease the costs of personnel management throughout the government. But taken together with the substantive reforms I have proposed, this Plan will greatly improve the government's ability to manage programs, speed the delivery of Federal services to the public, and aid in executing other reorganizations I will propose to the Congress, by improving Federal personnel management.

Each of the provisions of this proposed reorganization would accomplish one or more of the purposes set forth in 5 U.S.C. 901(a). No functions are abolished by the Plan, but the offices referred to in 5 U.S.C. 5109(b) and 5 U.S.C. 1103(d) are abolished. The portions of the Plan providing for the appointment and pay for the head and

one or more officers of the Office of Personnel Management, the Merit Systems Protection Board, the Federal Labor Relations Authority and the Federal Service Impasses Panel, are necessary to carry out the reorganization. The rates of compensation are comparable to those for similar positions within the Executive Branch.

I am confident that this Plan and the companion civil service reform legislation will both lead to more effective protection of Federal employees' legitimate rights and a more rewarding workplace. At the same time the American people will benefit from a better managed, more productive and more efficient Federal Government.

JIMMY CARTER.

THE WHITE HOUSE, May 23, 1978.

EXECUTIVE ORDER NO. 10729

Ex. Ord. No. 10729, Sept. 16, 1957, 22 F.R. 7449, which established the position of the Special Assistant to the President for Personnel Management, was revoked by Ex. Ord. No. 11205, Mar. 15, 1965, 30 F.R. 3513.

EX. ORD. NO. 11205. REVOCATION OF EXECUTIVE ORDER NO. 10729

Ex. Ord. No. 11205, Mar. 15, 1965, 30 F.R. 3513, provided: By virtue of the authority vested in me as President of the United States, the position of Special Assistant to the President for Personnel Management, established by Executive Order No. 10729 of September 16, 1957, is abolished, and that Order is hereby revoked.

LYNDON B. JOHNSON.

EX. ORD. NO. 12107. IMPLEMENTATION OF REFORM OF PERSONNEL MANAGEMENT SYSTEM

Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, as amended by Ex. Ord. No. 12126, Mar. 29, 1979, 44 F.R. 18923; Ex. Ord. No. 12128, Apr. 4, 1979, 44 F.R. 20625, provided:

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, and by Section 403 of Reorganization Plan No. 2 of 1978 (43 FR 36037) [set out above], it is hereby ordered as follows:

SECTION 1

IMPLEMENTATION OF REORGANIZATION PLAN NO. 2 OF 1978

1-1. OFFICE OF PERSONNEL MANAGEMENT

1-101. *Establishment of Office of Personnel Management.* The establishment of the Office of Personnel Management and of the positions of Director, Deputy Director, and Associate Directors of that Office, as provided in Sections 101 and 103 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1-102. *Transfer of Functions.* Section 102 of Reorganization Plan No. 2 of 1978, transferring functions to the Director of the Office of Personnel Management, shall be effective on January 1, 1979.

1-2. MERIT SYSTEMS PROTECTION BOARD

1-201. *Redesignation of Civil Service Commission.* The redesignation of the Civil Service Commission as the Merit Systems Protection Board and of the Commissioners as Members of the Board as provided in Section 201 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-202. *Functions of the Merit Systems Protection Board.* The functions of the Merit Systems Protection Board as provided in Section 202 and the savings provisions of Section 203 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-3. THE SPECIAL COUNSEL

1-301. *Establishment of the Office of Special Counsel.* The establishment of the Office of Special Counsel to the Merit Systems Protection Board as provided in

Section 204(a) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-302. *Functions of the Special Counsel.* The transfer of functions provided for in Section 204(b) and the performance of functions set forth in Section 204(c)-(g) of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-4. THE FEDERAL LABOR RELATIONS AUTHORITY

1-401. *The Establishment of the Federal Labor Relations Authority and the Office of General Counsel.* The establishment of the Federal Labor Relations Authority as provided in Section 301 and of the Office of General Counsel of the Authority as provided in Section 302 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-402. *The Federal Service Impasses Panel.* The continuation of the Federal Service Impasses Panel established under Executive Order No. 11491, as amended [set out as a note under section 7101 of this title], as a distinct organizational entity within the Federal Labor Relations Authority as provided in Section 303 of Reorganization Plan No. 2 of 1978, shall be effective on January 1, 1979.

1-403. *Functions of the Federal Labor Relations Authority, the General Counsel, and the Federal Service Impasses Panel.* The transfer of functions provided for in Section 304 of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

1-5. GENERAL

1-501. *General Effective Date.* All other provisions of Reorganization Plan No. 2 of 1978 shall be effective on January 1, 1979.

SECTION 2

REDESIGNATIONS, AMENDMENTS TO RULES AND EXECUTIVE ORDERS AND GENERAL PROVISIONS

2-1. REDESIGNATIONS

2-101. *Office of Personnel Management.* Each of the Executive orders, as amended, listed in this Section under subsections (a) and (b), as applicable, and any other order which relates to functions or areas of responsibility delegated to the Office of Personnel Management, is amended and revised by substituting the words "Office of Personnel Management" for the words "Civil Service Commission" or "United States Civil Service Commission"; by substituting the word "Office" for the word "Commission" wherever the word "Commission" is used as a reference to United States Civil Service Commission; and by substituting the words "Director, Office of Personnel Management" for the words "Chairman, Civil Service Commission", "Chairman, United States Civil Service Commission", "Commissioners" or "Commissioner" wherever they appear.

(a) Executive orders relating to the Civil Service Rules, ethics and other matters of Presidential interest.

Executive Orders Numbered

8743
10577, as amended, except for
Rules IV and V, as amended
in this order,
10641
10717
10927
11183
11222
11315
11451
11570
11639
11648
11721
11935
12004
12014

(b) Other Executive orders relating to Federal Personnel Management, and membership on Councils, Boards, and Committees.

Executive Orders Numbered

12043
8744
9230
9712
9830
9932
9961
10000
10242
10422
10450
10459
10530
10549
10550
10552
10556
10647
10763
10774, except for Section 3(e)
10804
10826
10880
10903
10973
10982
11103
11171
11203
11219
11228
11264
11348
11355
11422
11434
11438
11490
11521
11552
11561
11579
11589
11603
11609
11639
11744
11817
11890
11895
11899
11938
11955
12008
12015
12027
12049
12067
12070
12089
12105

2-102. *Merit Systems Protection Board*. The provisions of Section 3(e) of Executive Order No. 10774 [set out as a note under section 2025 of Title 22, Foreign Relations and Intercourse], and Executive Order No. 11787 [formerly set out as a note under section 7701 of this title], are hereby amended and revised by substituting the words “Merit Systems Protection Board” for the words “Civil Service Commission” or “Commission” when used as a reference to the Civil Service Commission wherever such words appear.

2-103. *Amending the Civil Service Rules*. Section 101 of Executive Order No. 10577, as amended [set out as a note under section 3301 of this title], is further amended by substituting for Rule II—Appointment Through the Competitive System, a new Sec. 2.4 as follows:

“Sec. 2.4. *Probationary period*. Persons selected from registers of eligibles for career or career-conditional appointment and employees promoted, transferred, or otherwise assigned, for the first time, to supervisory or managerial positions shall be required to serve a probationary period under terms and conditions prescribed by the Office.”;

by deleting the last sentence under Rule IV—Prohibited Practices, Sec. 4.3; and

by substituting for Rule V—Regulations, Investigations, and Enforcement, a new Rule V as follows:

“RULE V—REGULATIONS, INVESTIGATIONS, EVALUATION, AND ENFORCEMENT”

“Sec. 5.1. *Civil Service Regulations*. The Director, Office of Personnel Management, shall promulgate and enforce regulations necessary to carry out the provisions of the Civil Service Act and the Veterans’ Preference Act, as reenacted in Title 5, United States Code, the Civil Service Rules, and all other statutes and Executive orders imposing responsibilities on the Office. The Director is authorized, whenever there are practical difficulties and unnecessary hardships in complying with the strict letter of the regulation, to grant a variation from the strict letter of the regulation if such a variation is within the spirit of the regulations, and the efficiency of the Government and the integrity of the competitive service are protected and promoted. Whenever a variation is granted the Director shall note the official record to show: (1) the particular practical difficulty or hardship involved, (2) what is permitted in place of what is required by regulation, (3) the circumstances which protect or promote the efficiency of the Government and the integrity of the competitive service, and (4) a statement limiting the application of the variation to the continuation of the conditions which gave rise to it. Like variations shall be granted whenever like conditions exist. All such decisions and information concerning variations noted in the official record shall be published promptly in a Federal Personnel Manual, Letter or Bulletin and in the Director’s next annual report.

“Sec. 5.2. *Investigation and Evaluations*. The Director may secure effective implementation of the civil service laws, rules, and regulations, and all Executive orders imposing responsibilities on the Office by:

(a) Investigating the qualifications and suitability of applicants for positions in the competitive service. The Director may require appointments to be made subject to investigation to enable the Director to determine, after appointment, that the requirements of law or the civil service rules and regulations have been met.

(b) Evaluating the effectiveness of: (1) personnel policies, programs, and operations of Executive and other Federal agencies subject to the jurisdiction of the Office, including their effectiveness with regard to merit selection and employee development; (2) agency compliance with and enforcement of applicable laws, rules, regulations and office directives; and (3) agency personnel management evaluation systems.

(c) Investigating, or directing an agency to investigate and report on, apparent violations of applicable laws, rules, regulations, or directives requiring corrective action, found in the course of an evaluation.

(d) Requiring agencies to report, in a manner and at times as the Director may prescribe, personnel information the Director requests relating to civilian employees in the Executive branch of the Government, as defined by Section 311 of the Civil Service Reform Act of 1978 [set out as a note under section 3101 of this title], including positions and officers and employees in the competitive, excepted and Senior Executive services, whether permanent, career-conditional, temporary or emergency.

“Sec. 5.3. *Enforcement*.

(a) The Director is authorized to ensure enforcement of the civil service laws, rules, and regulations, and all applicable Executive orders, by:

(1) Instructing an agency to separate or take other action against an employee serving an appointment subject to investigation when the Director finds that

the employee is disqualified for Federal employment. Where the employee or the agency appeals the Director's finding that a separation or other action is necessary, the Director may instruct the agency as to whether or not the employee should remain on duty and continue to receive pay pending adjudication of the appeal: *Provided*, That when an agency separates or takes other action against an employee pursuant to the Director's instructions, and the Director, on the basis of new evidence, subsequently reverses the initial decision as to the employee's qualifications and suitability, the agency shall, upon request of the Director, restore the employee to duty or otherwise reverse any action taken.

(2) Reporting the results of evaluation or investigations to the head of the agency concerned with instructions for any corrective action necessary, including cancellation of personnel actions where appropriate. The Director's findings resulting from evaluations or investigations are binding unless changed as a result of agency evidence and arguments against them. If, during the course of any evaluation or investigation under this Section, the Director finds evidence of matters which come within the investigative and prosecutorial jurisdiction of the Special Counsel of the Merit Systems Protection Board, the Director shall refer this evidence to the Special Counsel for appropriate disposition.

(b) Whenever the Director issues specific instructions as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the head of the agency concerned shall comply with the Director's instructions.

(c) If the agency head fails to comply with the specific instructions of the Director as to separation or other corrective action with regard to an employee, including cancellation of a personnel action, the Director may certify to the Comptroller General of the United States the agency's failure to act together with such additional information as the Comptroller General may require, and shall furnish a copy of such certification to the head of the agency concerned. The individual with respect to whom such separation or other corrective action was instructed shall be entitled thereafter to no pay or only to such pay as appropriate to effectuate the Director's instructions.

"Sec. 5.4. *Information and Testimony*. When required by the Office, the Merit Systems Protection Board, or the Special Counsel of the Merit Systems Protection Board, or by authorized representatives of these bodies, agencies shall make available to them, or to their authorized representatives, employees to testify in regard to matters inquired of under the civil service laws, rules, and regulations, and records pertinent to these matters. All such employees, and all applicants or eligibles for positions covered by these rules, shall give to the Office, the Merit Systems Protection Board, the Special Counsel, or to their authorized representatives, all information, testimony, documents, and material in regard to the above matters, the disclosure of which is not otherwise prohibited by law or regulation. These employees, applicants, and eligibles shall sign testimony given under oath or affirmation before an officer authorized by law to administer oaths. Employees are performing official duty when testifying or providing evidence pursuant to this section."

2-104. *Effectiveness of Rule Changes*. The amendments to rules shall be effective on January 1, 1979, to the extent provided by law on that date.

2-2. REVOCATION OF EXECUTIVE ORDERS AND DELEGATION OF FUNCTIONS

2-201. *Revocation of Executive Orders and Delegation of Functions to the Director*. Executive Orders numbered 10540 and 10561 [set out as notes under sections 6301 and 1302, respectively, of this title] are revoked and the authority vested in the President by Section 202(c)(1)(C) of the Annual Sick Leave Act of 1951, as amended [section 6301(2)(XI) of this title], and the authority of the President, pursuant to the Civil Service Act of January

16, 1883, to designate official personnel folders in government agencies as records of the Office of Personnel Management and to prescribe regulations relating to the establishment, maintenance and transfers of official personnel folders, are delegated to the Director of the Office of Personnel Management. Any rules, regulations, directives, instructions or other actions taken pursuant to the authority delegated to the Director of the Office of Personnel Management shall remain in effect until amended, modified, or revoked pursuant to the delegations made by this Order.

2-202. *Savings Provision*. All personnel actions and decisions affecting employees or applicants for employment made on or before January 11, 1979 shall continue to be governed by the applicable Executive order, and the rules and regulations implementing that Order, to the same extent as if that Executive order had not been revoked effective January 11, 1979 unless amended, modified or revoked pursuant to this Order.

2-3. LABOR MANAGEMENT RELATIONS IN THE FEDERAL SERVICE

2-301. *Labor Management Relations*. Executive Order No. 11491 of October 29, 1969, as amended by Executive Orders numbered 11616, 11636, 11838, 11901, and 12027 [set out as a note under section 7101 of this title], relating to labor-management relations in the Federal service, is further amended as follows:

1. Subsections (g), (h) and (i) of Section 2 are amended and a new subsection (j) is added to read as follows:

"(g) 'Authority' means the Federal Labor Relations Authority;

"(h) 'Panel' means the Federal Service Impasses Panel;

"(i) 'Assistant Secretary' means the Assistant Secretary of Labor for Labor Management Relations; and

"(j) 'General Counsel' means the General Counsel of the Authority."

2. Section 3(b) is amended—

(a) by substituting for paragraph (6) the following:

"(6) The Tennessee Valley Authority; or"; and

(b) by adding the following:

"(7) Personnel of the Federal Labor Relations Authority (including the Office of the General Counsel and the Federal Service Impasses Panel)."

3. Section (d) is amended to read as follows:

"(d) Employees engaged in administering a labor-management relations law or this Order who are otherwise authorized by this Order to be represented by a labor organization shall not be represented by a labor organization which also represents other groups of employees under the law or this Order, or which is affiliated directly or indirectly with an organization which represents such a group of employees."

4. Section 4 is amended to read as follows:

"Sec. 4. *Powers and Duties of the Federal Labor Relations Authority*.

"(a) [Revoked].

"(b) The Authority shall administer and interpret this Order, decide major policy issues, and prescribe regulations.

"(c) The Authority shall, subject to its regulations:

(1) decide questions as to the appropriate unit for the purpose of exclusive recognition and related issues submitted for its considerations;

(2) supervise elections to determine whether a labor organization is the choice of a majority of the employees in an appropriate unit as their exclusive representative, and certify the results;

(3) decide questions as to the eligibility of labor organizations for national consultation rights;

(4) decide unfair labor practice complaints; and

(5) decide questions as to whether a grievance is subject to a negotiated grievance procedure or subject to arbitration under an agreement as provided in Section 13(d) of this Order.

"(d) The Authority may consider, subject to its regulations:

(1) appeals on negotiability issues as provided in Section 11(c) of this Order;

(2) exceptions to arbitration awards;
 (3) appeals from decisions of the Assistant Secretary of Labor for Labor-Management Relations issued pursuant to Section 6(b) this Order; and
 (4) other matters it deems appropriate to assure the effectuation of the purposes of this Order.

“(e) In any matters arising under subsection (c) and (d)(3) of this Section, the Authority may require an agency or a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as the Authority considers appropriate to effectuate the policies of this Order.

“(f) In performing the duties imposed on it by this Section, the Authority may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].”

5. The caption of Section 5 is amended to read as follows:

“Sec. 5. *Powers and Duties of the Federal Service Impasses Panel.*”

6. Section 5(a) is amended:

(a) by substituting the words “a distinct organizational entity within the Authority” for the words “an agency within the Council” in the first sentence; and

(b) by substituting the word “Authority” for the word “Council” in the third sentence.

7. Section 6 is amended to read as follows:

“Sec. 6. *Powers and Duties of the Office of the General Counsel and the Assistant Secretary of Labor for Labor-Management Relations.*

“(a) The General Counsel is authorized, upon direction by the Authority, to:

(1) investigate complaints of violations of Section 19 of this Order;

(2) make final decisions as to whether to issue unfair labor practice complaints and prosecute such complaints before the Authority;

(3) direct and supervise all employees in the Office of General Counsel, including employees of the General Counsel in the regional office of the Authority;

(4) perform such other duties as the Authority may prescribe; and

(5) prescribe regulations needed to administer his functions under this Order.

“(b) The Assistant Secretary shall:

(1) decide alleged violations of the standards of conduct for labor organizations, established in Section 18 of this Order; and

(2) prescribe regulations needed to administer his functions under this Order.

“(c) In any matter arising under paragraph (b) of this Section, the Assistant Secretary may require a labor organization to cease and desist from violations of this Order and require it to take such affirmative action as he considers appropriate to effectuate the policies of this Order.

“(d) In performing the duties imposed on them by this Section, the General Counsel and the Assistant Secretary may request and use the services and assistance of employees of other agencies in accordance with Section 1 of the Act of March 4, 1915 (38 Stat. 1084, as amended; 31 U.S.C. 686) [31 U.S.C. 1535].”

8. Section 9 is amended:

(a) by substituting the word “Authority” for the word “Council” in the first sentence of subsection (a); and

(b) by substituting the word “Authority” for the words “Assistant Secretary” in subsection (c).

9. Section 10 is amended:

(a) by substituting the word “Authority” for the words “Assistant Secretary” in the last sentence of subsection (b); and

(b) by substituting the word “Authority” for the words “Assistant Secretary” and the word “it” for the word “him”, in the first sentence of subsection (d).

10. Section 11 is amended:

(a) by substituting the word “Authority” for the word “Council” in the first sentence of subsection (a); and

(b) by substituting the word “Authority” for the word “Council” in paragraph (4) of subsection (c).

11. Section 11(d) is revoked.

12. Section 13 is amended:

(a) by substituting the word “Authority” for the word “Council” in the third sentence of subsection (b); and

(b) by substituting the word “Authority” for the words “Assistant Secretary” in the first and second sentence of subsection (d).

13. Section 19(d) is amended by substituting the word “Authority” for the words “Assistant Secretary” in the last sentence.

14. Section 21(a) is amended by substituting the words “Office of Personnel Management” for the words “Civil Service Commission” in the second sentence.

15. Section 22 is amended:

(a) by substituting the words “Office of Personnel Management” for the words “Civil Service Commission” in the first sentence and

(b) by substituting the words “Merit Systems Protection Board” for the words “Civil Service Commission” in the second and third sentences.

16. Section 25(a) is amended:

(a) by substituting the words “Office of Personnel Management” for the words “Civil Service Commission” in the first, second and third sentences; and

(b) by substituting the word “Authority” for the word “Council” in the third sentence.

17. Section 25(b) is amended by substituting the words “Office of Personnel Management” for the words “Department of Labor and Civil Service Commission.”

2-4. GENERAL PROVISIONS

2-401. *Study and Report Provisions.* The Director of the Office of Personnel Management is directed to conduct a study of Executive orders listed in Section 2-101(a) and (b) and to coordinate the study with such other agencies as may be named in or affected by these orders. The Director of Personnel Management and the Director of the Office of Management and Budget are directed to submit a report on or before July 1, 1981 to the President concerning the performance of functions specified in these Executive orders and any other Executive orders affecting the functions or responsibilities of the Office of Personnel Management. The report shall contain specific detailed recommendations for the continuation, modification, revision or revocation of each Executive order.

2-402. *Continuing Effect of this Order.* Except as required by the Civil Service Reform Act of 1978 [Pub. L. 95-454] as its provisions become effective, in accord with Section 7135 of Title 5, United States Code, as amended, and in accord with Section 902(a) of that Act [set out as a Savings Provisions note above], the provisions of this Order shall continue in effect, according to its terms, until modified, terminated or suspended.

2-403. *Transfers and Determinations.*

(a) The records, property, personnel and positions, and unexpended balances of appropriations or funds related to Civil Service Commission functions reassigned by this Order that are available, or to be made available, and necessary to finance or discharge the reassigned functions are transferred to the Director of the Office of Personnel Management, the Federal Labor Relations Authority, or the Federal Service Impasses Panel, as appropriate.

(b) The Director of the Office of Management and Budget shall make such determinations, issue such Orders and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property and personnel.

2-404. *Effective Date.* Except as otherwise specifically provided in this Order, this Order shall be effective on January 1, 1979.

JIMMY CARTER.

EXECUTIVE ORDER NO. 12157

Ex. Ord. No. 12157, Sept. 14, 1979, 44 F.R. 54035, which related to the President's Management Improvement

Council, was revoked by Ex. Ord. No. 12258, Dec. 31, 1980, 46 F.R. 1251, set out as a note under section 14 of the Appendix to this title.

§ 1102. Director; Deputy Director; Associate Directors

(a) There is at the head of the Office of Personnel Management a Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The term of office of any individual appointed as Director shall be 4 years.

(b) There is in the Office a Deputy Director of the Office of Personnel Management appointed by the President, by and with the advice and consent of the Senate. The Deputy Director shall perform such functions as the Director may from time to time prescribe and shall act as Director during the absence or disability of the Director or when the office of Director is vacant.

(c) No individual shall, while serving as Director or Deputy Director, serve in any other office or position in the Government of the United States except as otherwise provided by law or at the direction of the President. The Director and Deputy Director shall not recommend any individual for appointment to any position (other than Deputy Director of the Office) which requires the advice and consent of the Senate.

(d) There may be within the Office of Personnel Management not more than 5 Associate Directors, as determined from time to time by the Director. Each Associate Director shall be appointed by the Director.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 95-454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1119.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 632 (2d-4th pars.).	Jan. 16, 1883, ch. 27, § 1 (2d, 3d pars.), 22 Stat. 403. July 31, 1956, ch. 804, § 201(a), 70 Stat. 742.

In subsection (a), the second sentence is substituted for original language concerning designation of Commissioners to serve six, four, and two years, respectively, as that provision is executed.

The section is reorganized to place the statutes relating to vacancies together, and redundancies are eliminated. Provisions relating to pay and travel expenses of Commissioners are omitted as superseded by the Act of Aug. 14, 1964, Pub. L. 88-426, § 303(c)(18), (d)(66), 78 Stat. 417, 419, and Act of June 9, 1949, ch. 185, 63 Stat. 166, respectively, which are carried into this title.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95-454 substituted “Director; Deputy Director; Associate Directors” for “Term of office; filling vacancies; removal” in section catchline, and in text provisions relating to the Director, Deputy Director, and Associate Directors of the Office of Personnel Management for provisions relating to the term of office, vacancies, and removal of members of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

CROSS REFERENCES

Compensation of Director, Deputy Director, and Associate Directors, see sections 5313, 5314, and 5316 of this title.

§ 1103. Functions of the Director

(a) The following functions are vested in the Director of the Office of Personnel Management, and shall be performed by the Director, or subject to section 1104 of this title, by such employees of the Office as the Director designates:

(1) securing accuracy, uniformity, and justice in the functions of the Office;

(2) appointing individuals to be employed by the Office;

(3) directing and supervising employees of the Office, distributing business among employees and organizational units of the Office, and directing the internal management of the Office;

(4) directing the preparation of requests for appropriations for the Office and the use and expenditure of funds by the Office;

(5) executing, administering, and enforcing—

(A) the civil service rules and regulations of the President and the Office and the laws governing the civil service; and

(B) the other activities of the Office including retirement and classification activities;

except with respect to functions for which the Merit Systems Protection Board or the Special Counsel is primarily responsible;

(6) reviewing the operations under chapter 87 of this title;

(7) aiding the President, as the President may request, in preparing such civil service rules as the President prescribes, and otherwise advising the President on actions which may be taken to promote an efficient civil service and a systematic application of the merit system principles, including recommending policies relating to the selection, promotion, transfer, performance, pay, conditions of service, tenure, and separation of employees;

(8) conducting, or otherwise providing for the conduct of, studies and research under chapter 47 of this title into methods of assuring improvements in personnel management; and

(9) incurring official reception and representation expenses of the Office subject to any limitation prescribed in any law.

(b)(1) The Director shall publish in the Federal Register general notice of any rule or regulation which is proposed by the Office and the application of which does not apply solely to the Office or its employees. Any such notice shall include the matter required under section 553(b)(1), (2), and (3) of this title.

(2) The Director shall take steps to ensure that—

(A) any proposed rule or regulation to which paragraph (1) of this subsection applies is post-

ed in offices of Federal agencies maintaining copies of the Federal personnel regulations; and

(B) to the extent the Director determines appropriate and practical, exclusive representatives of employees affected by such proposed rule or regulation and interested members of the public are notified of such proposed rule or regulation.

(3) Paragraphs (1) and (2) of this subsection shall not apply to any proposed rule or regulation which is temporary in nature and which is necessary to be implemented expeditiously as a result of an emergency.

(4) Paragraphs (1) and (2) of this subsection and section 1105 of this title shall not apply to the establishment of any schedules or rates of basic pay or allowances under subpart D of part III of this title. The preceding sentence does not apply to the establishment of the procedures, methodology, or criteria used to establish such schedules, rates, or allowances.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1119; Pub. L. 99-251, title III, §§ 301, 302, Feb. 27, 1986, 100 Stat. 26.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	[Uncodified].	1949 Reorg. Plan No. 5, §§ 1, 2(a) (35th through 46th words), 3, eff. Aug. 20, 1949, 63 Stat. 1067, 1069.
.....	5 U.S.C. 632 (5th par.).	July 31, 1956, ch. 804, § 201(b), 70 Stat. 742.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1986—Subsec. (a)(9). Pub. L. 99-251, § 301, added par. (9).

Subsec. (b)(4). Pub. L. 99-251, § 302, added par. (4).

1978—Pub. L. 95-454 substituted “Functions of the Director” for “Chairman; Vice Chairman; Executive Director” in section catchline, and in text provisions relating to the functions of the Director of the Office of Personnel Management for provisions relating to the Chairman, Vice Chairman, and Executive Director of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1105, 1204, 1212, 3133 of this title.

§ 1104. Delegation of authority for personnel management

(a) Subject to subsection (b)(3) of this section—

(1) the President may delegate, in whole or in part, authority for personnel management functions, including authority for competitive examinations, to the Director of the Office of Personnel Management; and

(2) the Director may delegate, in whole or in part, any function vested in or delegated to

the Director, including authority for competitive examinations (except competitive examinations for administrative law judges appointed under section 3105 of this title, the cost of which examinations shall be reimbursed by payments from the agencies employing such judges to the revolving fund established under section 1304(e)), to the heads of agencies in the executive branch and other agencies employing persons in the competitive service.

(b)(1) The Office shall establish standards which shall apply to the activities of the Office or any other agency under authority delegated under subsection (a) of this section.

(2) The Office shall establish and maintain an oversight program to ensure that activities under any authority delegated under subsection (a) of this section are in accordance with the merit system principles and the standards established under paragraph (1) of this subsection.

(3) Nothing in subsection (a) of this section shall be construed as affecting the responsibility of the Director to prescribe regulations and to ensure compliance with the civil service laws, rules, and regulations.

(4) At the request of the head of an agency to whom a function has been delegated under subsection (a)(2), the Office may provide assistance to the agency in performing such function. Such assistance shall, to the extent determined appropriate by the Director of the Office, be performed on a reimbursable basis through the revolving fund established under section 1304(e).

(c) If the Office makes a written finding, on the basis of information obtained under the program established under subsection (b)(2) of this section or otherwise, that any action taken by an agency pursuant to authority delegated under subsection (a)(2) of this section is contrary to any law, rule, or regulation, or is contrary to any standard established under subsection (b)(1) of this section, the agency involved shall take any corrective action the Office may require.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 399; Pub. L. 90-83, § 1(2), Sept. 11, 1967, 81 Stat. 195; Pub. L. 95-454, title II, § 201(a), Oct. 13, 1978, 92 Stat. 1120; Pub. L. 104-52, title IV, § 1, Nov. 19, 1995, 109 Stat. 489.)

HISTORICAL AND REVISION NOTES 1966 ACT

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	[Uncodified].	1949 Reorg. Plan No. 5, § 2(a) (less 35th through 46th words), (b), eff. Aug. 20, 1949, 63 Stat. 1067.
.....	5 U.S.C. 3013(a) (1st sentence, less 10th through 24th words).	Sept. 28, 1959, Pub. L. 86-382, § 14(a) (1st sentence, less 10th through 24th words), 73 Stat. 716.

In the first sentence, the word “officers” is omitted as included in “employees”.

Subsection (a)(1) is added on authority of the words “to secure accuracy, uniformity, and justice in all their proceedings” in the first sentence of former section 635, which is carried into section 1105. The function in this paragraph was transferred from the chief examiner to the Chairman of the United States Civil Service Commission by 1949 Reorg. Plan No. 5, § 2(a)(2).

In subsection (a)(4), the words “requests for appropriations” are substituted for “budget estimates” on authority of the Act of Sept. 12, 1950, ch. 946, §102(f), 64 Stat. 833; 31 U.S.C. 22.

In subsection (b)(2), the word “prescription” is substituted for “promulgation” and the words “now vested in the Commission” are omitted as surplusage.

In subsection (b)(4), the words “as is now authorized to be taken by the Commission” are omitted as surplusage.

In subsection (b)(5), the words “civil service” are substituted for “Federal service”.

In subsection (b)(7), the words “submission of requests for appropriations” are substituted for “revision and submission . . . of budget estimates” on authority of the Act of Sept. 12, 1950, ch. 946, §102(f), 64 Stat. 833; 31 U.S.C. 22.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

1967 ACT

Section of title 5	Source (U.S. Code)	Source (Statutes at Large)
1104(a)(6) ...	5:8713(a). [Uncodified].	[None.] 1965 Reorg. Plan No. 4, §§11(a), (e) (as applicable to (a)), 12 (as applicable to §11(a)), 13 (as applicable to §11(a)), eff. July 27, 1965, 79 Stat. 1322.

The paragraph added by this section is based on 5 U.S.C. 8713(a), and is restated to reflect the effect of sections 11–13 of 1965 Reorganization Plan No. 4, effective July 27, 1965.

AMENDMENTS

1995—Subsec. (a). Pub. L. 104–52, §1(1)(B), struck out closing provisions which read as follows: “except that the Director may not delegate authority for competitive examinations with respect to positions that have requirements which are common to agencies in the Federal Government, other than in exceptional cases in which the interests of economy and efficiency require such delegation and in which such delegation will not weaken the application of the merit system principles.”

Subsec. (a)(2). Pub. L. 104–52, §1(1)(A), inserted “, the cost of which examinations shall be reimbursed by payments from the agencies employing such judges to the revolving fund established under section 1304(e)” after “title” and substituted period for semicolon at end.

Subsec. (b)(4). Pub. L. 104–52, §1(2), added par. (4).

1978—Pub. L. 95–454 substituted “Delegation of authority for personnel management” for “Functions of Chairman” in section catchline, and in text provisions relating to the delegation of authority for personnel management for provisions relating to functions of the Chairman of the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1103 of this title.

§ 1105. Administrative procedure

Subject to section 1103(b) of this title, in the exercise of the functions assigned under this chapter, the Director shall be subject to subsections (b), (c), and (d) of section 553 of this title, notwithstanding subsection (a) of such section 553.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 400; Pub. L. 95–454, title II, §201(a), Oct. 13, 1978, 92 Stat. 1121.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 635 (less last 24 words of 6th sentence, and less 7th sentence).	Jan. 16, 1883, ch. 27, §3 (less last 24 words of 6th sentence, and less 7th sentence), 22 Stat. 404.
.....	[Uncodified].	1949 Reorg. Plan No. 5, §4, eff. Aug. 19, 1949, 63 Stat. 1069.

In subsection (a), the words “the District of Columbia” are substituted for “Washington”. The words “at least three individuals in the service of the United States” are substituted for a “a suitable number of persons, not less than three, in the official service of the United States”. So much of the first three sentences of former section 635 as related to the offices of the Chief Examiner and the Secretary are omitted because the offices were abolished by 1949 Reorg. Plan No. 5, §4. So much of the first sentence as imposed a duty on the Chief Examiner, under the Commission’s direction, to act with the examining boards to secure accuracy, uniformity, and justice in all their proceedings is restated in section 1104(a)(1). The fourth sentence of former section 635, authorizing the Commission to employ a stenographer and a messenger, is omitted as obsolete. The remainder is rewritten for clarity. The text of 1949 Reorg. Plan No. 5, §4, is omitted as executed.

In subsection (b), the words “Chairman, United States Civil Service Commission” are substituted for “chief examiner” on authority of 1949 Reorg. Plan No. 5, §2(a)(2). The words “at all times” are omitted as surplusage.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1978—Pub. L. 95–454 substituted “Administrative procedure” for “Boards of examiners” in section catchline, and in text provisions relating to administrative procedure applicable to administration of this chapter for provisions relating to boards of examiners for the United States Civil Service Commission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1103 of this title.

CHAPTER 12—MERIT SYSTEMS PROTECTION BOARD, OFFICE OF SPECIAL COUNSEL, AND EMPLOYEE RIGHT OF ACTION

SUBCHAPTER I—MERIT SYSTEMS PROTECTION BOARD

Sec.	
1201.	Appointment of members of the Merit Systems Protection Board.
1202.	Term of office; filling vacancies; removal.
1203.	Chairman; Vice Chairman.
1204.	Powers and functions of the Merit Systems Protection Board.
1205.	Transmittal of information to Congress.
1206.	Annual report.

SUBCHAPTER II—OFFICE OF SPECIAL COUNSEL

1211.	Establishment.
1212.	Powers and functions of the Office of Special Counsel.